

UNIVERSITY OF SANTO TOMAS, FR. ANTONIO CABEZON, FR. FRANCISCO TUAÑO, SOR PAZ MARFORI, SOR PAZ GALICIA, AND DR. FELIX ESTRADA, PETITIONERS, VS. NATIONAL LABOR RELATIONS COMMISSIO...

G.R. No. 54448. October 28, 1983

Ponente: GUERRERO, J.

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GUERRERO, J.:

Petitioners seek to annul the decision dated February 28, 1978 of Labor Arbiter Jose T. Collado, Jr. in Case No. LRD-RO4-3-3067-'76 for illegal dismissal and underpayment filed by private respondent Librado Canicosa against the University of Santo Tomas, et al. with the Regional Office No. 4 Department (Ministry of Labor) ordering the reinstatement of respondent Canicosa to his former position of Personnel Health Officer with full backwages, and the resolution dated May 29, 1980 of the National Labor Relations Commission issued in NLRC Case No. RB-IV-5982-77 affirming said decision of the Labor Arbiter.

The relevant facts are as stated in the Resolution of the NLRC, as follows:

"Sometime in July, 1950, the complainant was extended an appointment as instructor in respondent's Faculty of Medicine and Surgery. About the same time, he agreed under an informal arrangement to act as Medical Officer of the respondent, to serve the medical needs of all employees of the University and its hospital, first without compensation but only gifts on special occasions. After about two years, he was given a salary of P100.00 per month. Beginning 1970, he was required to hold office daily from 4:00 p.m. to 5:00 p.m., Monday thru Friday and to make himself available at all times within short notice for emergency cases, including Saturday mornings to which he complied.

"During the first term in office of the incumbent Director of the Sto. Tomas University Hospital, Dr. Conrado Banzon, a reorganization of the hospital was under-taken on account of complainant's expressed dissatisfaction with the apparent lack of recognition and/or relegation of his status as Medical Officer, it was proposed, approved and embodied in the reorganization plan and in the Manual of Personnel Policies and Procedures that a Personnel Health Service headed by a Personnel Health Officer be formally reorganized and created. By letter dated 6 August 1975 sent by Director Banzon the complainant as Personnel Health Officer, the latter's duties were precisely defined; his monthly salary was increased to P200.00; and his term of office was fixed up to 31 October 1975. Still protesting the inadequacy of the compensation, complainant nevertheless assumed the position beginning January, 1975.

"Sometime in August, 1975, the complainant applied for a leave of absence for the period from 15 September 1975 to 31 October 1975 for a trip abroad, which application was approved. Upon his return, he found another appointed to his position of Personnel Health Officer. The new appointee was later on granted a monthly salary of P500.00. The complainant demanded reinstatement but he was advised that his term of office expired on 31 October 1975 and was not reappointed.

"It appears, however, that during the complainant's tenure, he openly denounced the management of STUH for

alleged violations of labor laws; he also opposed the application for Filipino citizenship of its Administrator and co-chairman of respondent's Management Committee, Fr. Antonio Cabezon."

After hearing, Labor Arbiter Jose T. Collado, Jr. rendered a decision which, as earlier indicated, ordered the reinstatement of Dr. Canicosa to his former position of Personnel Health Officer with full backwages from November 1, 1975 until his actual reinstatement. Petitioners appealed to the NLRC which, however, affirmed the appealed decision and dismissed the appeal for obvious lack of merit.

Hence, the present petition.

Petitioners claim that respondent entered into the duties of the newly organized office with a term without protesting any feature thereof except the monthly salary and this constitutes an implied acceptance of the offer although he had the option to reject and remain in his old position; and that in accepting the new position and knowing the conditions attached thereto, in effect, he abandoned his old office which is incompatible with the new.

Petitioners likewise contend that it was a whimsical and capricious act of judgment or exercise of discretion for the NLRC to have applied the amended version of Article 270 of the Labor Code to acts prior to the effectivity thereof when it declared that respondent had acquired tenure in his old job and that "his tenure cannot be converted into one with a definite period."

It is further argued by petitioners that Article 270 as amended took effect on December 16, 1975 and should not be made to apply to an employment contract entered into in August, 1974 and ended with the expiration of the period stipulated therein on October 31, 1975. According to petitioners, the reason why the amended version was invoked rather than the original thereof is that Articles 268-272, inclusive, in their original form and style, unmistakably discloses the law's recognition of the validity and legitimacy of "fixed-period employment" or employment with a definite term and that in the light of the labor code provisions in force during all the time material to the controversy, it was perfectly licit and proper for parties to an employment contract to agree on a definite or fixed term.

With regard to the finding of the NLRC that the fixing of the term of office of respondent is ill-motivated as it was aimed at easing respondent out of the service since he had openly denounced the management of the Santo Tomas University Hospital for alleged violation of labor laws, petitioners countered that such a conclusion has no basis or contrary to the evidence on record.

We find no merit in the petition.

In the Memorandum appeal^[1] submitted by petitioners to the NLRC, it is shown that the reorganization of the hospital materialized only on account of respondent's expressed dissatisfaction with the lack of recognition of his status as Medical Officer. The contention of petitioners that the old position (Medical Officer) is incompatible with the new (Personnel Health Officer) does not hold water. It is precisely because of respondent's complaint which compelled petitioners to change the designation of the former from Medical Officer to Personnel Health Officer. As aptly found by the Labor Arbiter and affirmed by the NLRC, the positions of Medical Health Officer and Personnel Health Officer are one and the same; the duty of respondent remains also the same and that is, to serve the medical needs of the employees. In effect, there was a mere change of title or designation. As the Labor Arbiter stated:

"But the mere change of title of the position does not x x alter the situation because his (Dr. Canicosa's) main duty -- that of taking care of the health of the about 800 personnel of the hospital, was never changed. Not even the increase of the salary to P200.00 a month, considering that the increase of P100.00 was still insufficient if

we take into account the duties and responsibilities imposed on the occupant of the position." (p. 5, Annex E, Id.)

The above finding of the Labor Arbiter is affirmed by the NLRC as the latter ruled that "There is likewise no question that fundamentally, his duties remained the same, that of serving the medical needs of the personnel. Under this state of facts, it is indubitable that the Medical Officer and the Personnel Health Officer are one and the same position. There was merely a change of title as can be deduced from the fact that the complainant who was Medical Officer was automatically addressed as Personnel Health Officer in the 6 August 1974 letter informing him of his job description." This finding of fact arrived at by both the Labor Arbiter and the NLRC is binding upon Us and it is not within Our province to review nor revise the same.

From the facts of the case and the very nature of respondent's employment, it is indubitably shown that he was engaged to perform activities which are usually necessary or desirable in the usual business or trade of the University and that he was not hired for a specific project or undertaking the completion of which has been determined at the time of the engagement of the employee since he had been performing the same duties for the past 25 years. Evidently, respondent's employment is regular, thus he is entitled to security of tenure. Even on the assumption that respondent tacitly agreed to the conditions in the contract as to his term of office, it did not affect his regular status. Petitioners themselves in their memorandum admitted that respondent was a regular employee and that since his employment in July, 1950 until October 31, 1975, he had been continuing his service as Medical/Personnel Health Officer. We quote hereunder petitioner's memorandum as follows:

"4.2. DR. CANICOSA'S PRIOR STATUS AS "REGULAR EMPLOYEE"

In November, 1974, respondent Canicosa was a 'regular employee' of petitioner University. He was in fact then occupying two (2) positions, namely:

One, that of 'regular' faculty member (Associate Professor) of the College of Medicine: an employment which, in an educational institution, may be considered his primary or principal employment; and

Two, that of 'regular' Medical Officer, attending to Hospital employees, an employment which, in relation to that of teaching, should be regarded as secondary or incidental."[2]

By such admission, petitioners impliedly concede that respondent's case falls within the purview of Article 270 as amended by P.D. 850, considering that he had been engaged to perform activities usually necessary in the trade or business of his employer, that is, ministering to the medical and health needs of all the employees of petitioner University of Santo Tomas, including those of the Santo Tomas University Hospital, which are usually necessary or desirable in petitioner's usual business, that of operating a university or school. By reason of the very nature of complainant's employment, the same is thereby rendered as regular and may not be terminated except for a just cause or when authorized by the Code.

Petitioners' contention that the NLRC committed "a whimsical, capricious, arbitrary act of judgment, a grave abuse of discretion in giving retroactive effect to the amended version of Article 270 (by virtue of Section 33, P.D. 850 [now, Article 281 of the Labor Code] which became effective in December, 1975 as to become applicable in Dr. Canicosa's case who was employed in July, 1950 as Medical Officer, until October 31, 1975, by which time he was continuing his services as Personnel Health Officer, is without merit.

Whether the original provision of Art. 270 of the Labor Code (Employment Without a Fixed Period) or the amended one is applied, the criterion in either case is the same - respondent's employment is desirable or necessary in the usual business of the employer.

On this point, the Comment of the Solicitor General to the petition is well-taken, to wit:

"16. Petitioners' theory, however, appears to concede that respondent Dr. Canicosa's case may well fall within the pale of Article 270 as amended by Sec. 33 of PD No. 850, considering that his employment as Personnel Health Officer 'shall be deemed regular' since he 'had been engaged to perform activities which are usually necessary or desirable in the usual business or trade of the employer' (his ministration to the medical needs of all the employees of petitioner University of Sto. Tomas, including that of the STUH, being 'usually necessary or desirable' in its usual business [operating a university or school]); and that, therefore, Dr. Canicosa's employment as such is regular, despite the fact that his designation as Personnel Health Officer was for a fixed period, i.e. up to October 31, 1975, in which case he could have had security of tenure in that petitioner University of Sto. Tomas cannot just terminate his services, 'except for a just cause or when authorized by this Title' ('Title I - Termination of Employment x x x Art. 269. Security of tenure', as amended by PD No. 850);

"17. On the other hand, even were respondent NLRC to rely on the original Art. 270 of the Labor Code ("Employment without a fixed period - An employment shall be deemed to be without a definite period for purpose of this Title ['Title I - Termination of Employment'] where the employee has been engaged to perform activities which are usually necessary or de-sirable in the usual business or trade of the employer, x x'), Dr. Canicosa's appointment or designation as Personnel Health Officer (the latter, up to October 31, 1975) also 'shall be deemed to be without a definite period for pur-poses of this Title x x', considering that his employment as such was necessary or desirable in the usual business or trade of the employer x x', which is to minister to the medical needs of all the employees of petitioner University of Sto. Tomas, including those of the STUH. In this even, he was assured of security of tenure, according to the provisions of the original Sec. 269 ('Security of tenure') of the Labor Code ('In cases of employment without a definite period, the employer shall not terminate the services of an employee, except for a just cause or when authorized by this Title x x');

"18. In fine, petitioners' indulgence over a web of 'legal niceties' is merely an exercise in futility. Whether Dr. Canicosa's case comes within the ambit of the provisions of the original Articles 269 and 270, or within that of the provisions of the amended Articles 269 and 270, is immaterial. Both under the original provisions of Articles 269 and 270 and the amended provisions of Articles 269 and 270, respondent Dr. Canicosa is entitled to security of tenure, as he had been engaged while in the employ of petitioner University of Sto. Tomas in the performance of 'activities which are usually necessary or desirable in the usual business or trade of the employer' (i.e., ministering to the medical needs of all emplo-yees of petitioner University of Sto. Tomas, including those of the STUH). In either case, the criterion is one and the same, which is that 'the employee has been engaged to perform activities which are usually necessary or de-sirable in the usual business or trade of the employer.' The employee is thereby assured of his security of tenure. Thus, able counsel for petitioners had needlessly engrossed himself with worrying over whether or not the amended version of Article 270 (including that of Article 269) should be given 'retroactive effect' or should be applicable 'retrospectively'; "[3]

A comparative analysis of the Articles referred to above will readily show that under either version of the provisions thereof, whether original or amended, respon-dent Canicosa's employment may not be terminated except for a just cause or when authorized by the Code. Thus,

Under the Labor Code of the Philippines, promulgated by PD 442 dated May 1, 1974:

"Art. 269. Security of tenure. - In cases of employment without a definite period, the employer shall not terminate the services of an employee except for a just cause or when authorized by this Chapter. An employee who is unjustly dismissed from work shall be entitled to reinstatement without loss of seniority rights and to his back wages com-puted from the time his compensation was with-held from him up to the time of his reins-tatement.

"Art. 270. Employment without a fixed period. - An employment shall be deemed to be without a definite period for purposes of this Chapter where the employee has been engaged to perform activities which are usual-ly necessary or desirable in the usual business or trade of the employer, except where the employment has been fixed for a specific pro-ject or undertaking the comple-tion or termina-tion of which has been

determined at the time of the engagement of the employee or where the work or service to be performed is sea-sonal in nature and the employment is for the duration of the season.

"Art. 271. Probationary and fixed-period employment. - The termination of employment of probationary employees and those employed with a fixed period shall be subject to such regulations as the Secretary of Labor may prescribe to prevent the circumvention of the rights of the employees to be secured in their employment as provided herein."

Under Sec. 33, PD 850 dated December 16, 1975, the above Articles were amended to read as follows:

"Art. 269. Security of Tenure. - In case of regular employment, employer shall not terminate the services of an employee except for a just cause or when authorized by this Title. An employee who is unjustly dismissed from work shall be entitled to reinstatement without loss or seniority rights and to his back wages computed from the time his compensation was withheld from him up to the time of his reinstatement.

"Art. 270. Regular and Casual Employment. - The provisions of written agreement to the contrary notwithstanding and regard-less of the oral agreements of the parties, an employment shall be deemed to be regular where the employee has been engaged to perform activities which are usually necessary or desirable in the usual business or trade of the employer except where the employment has been fixed for a specific project or undertaking, the completion or termination of which has been determined at the time of the engagement of the employee or where the work or service to be performed is seasonal in nature and the employment is for the du-ration of the season.

An employment shall be deemed to be casual if it is not covered by the preceding paragraph: provided, that, any employee who has rendered at least one year of service, whether such service is continuous or broken, shall be considered a regular employee with respect to the activity in which he is employed and his employment shall continue while such actually exists.

"Art. 271. Probationary Employment. - Probationary employment shall not exceed six months from the date the employee started working, unless it is covered by an apprenticeship agreement stipulating a longer period. The services of an employee who has been engaged in a probationary basis may be terminated for a just cause or when he fails to qualify as a regular employee in accor-dance with reasonable standards made known by the employer to the employee at the time of his engagement. An employee who is al-lowed to work after a probationary period shall be considered a regular employee."

Clearly then, even under the original provisions of Article 270, where the employee has been engaged to per-form activities which are usually necessary or desirable in the business or trade of the employer, the employment is deemed to be without a definite period and pursuant to Art. 269 in such a case of employment without a definite period, the employer shall not terminate the services of the employee except for a just cause or when authorized by Chapter I (Termination of Employment).

In the case at bar, Dr. Canicosa's employment as Medical Officer from July, 1950 to August, 1975, a period of 25 years, during which time he had been performing his duties serving the medical needs of about 800 personnel of the petitioner University which indisputably are necessary and desirable in the business of said petitioner, had certainly attained a regular status without a definite period, thereby assuring for himself a security of tenure that is fully protected under the Labor Code. The Labor Code it-self requires that medical and dental services be furnished by every employer to his employees pursuant to Art. 155 which states:

"Art. 155. - Emergency medical and dental services. - It shall be the duty of every employer to furnish his employees in any locality with free medical and dental attendance and facilities consisting of:

(a) The services of a full-time regis-tered nurse when the number of employees exceeds fifty (50) but not more than two hundred except when the employer does not maintain hazardous work places, in which case the

services of a graduate first-aiders shall be provided for the protection of the workers, where no registered nurse is available. The Secretary of Labor shall provided by appropriate regulations the services that shall be required where the number of employees does not exceed fifty and shall determine by appropriate order hazardous work places for purposes of this Article;

(b) The services of a full-time registered nurse, a part-time physician and dentist, and an emergency clinic, when the number of employees exceeds two hundred but not more than three hundred; and

(c) The services of a full-time physician, dentists, and a full-time registered nurse as well as a dental clinic, and an infirmary or emergency hospital with one bed capacity for every one hundred employees, when the number of employees exceeds three hundred.

In cases of hazardous work places, no employer shall engage the services of a physician or dentist who cannot stay in the premises of the establishment for at least two hours, in the case of those engaged on part-time basis, and not less than eight hours in the case of those employed on full-time basis. Where the undertaking is non-hazardous in nature, the physician and dentist may be engaged on retained basis, subject to such regulations as the Secretary of Labor may prescribe to insure immediate availability of medical and dental treatment and attendance in case of emergency." (Pres. Decree No. 442, as amended by Pres. Decree No. 570-A).

We cannot subscribe to, nor agree with the theory of petitioners that upon the reorganization of the hospital and the creation of the Office of Personnel Health Officer and respondent having been informed thereof by letter of Director Banzon dated 6 August 1974 and later assumed the position beginning January, 1975 without objecting to the term fixed for the new office up to October 31, 1975, said respondent abandoned his old office and knowingly accepted the new job with a fixed period. Petitioners' theory is flimsy, frivolous and irrational for respondent would have thereby abandoned and given up his security of tenure, a right already attained by him and fully protected by law. We have ruled that the two positions, that of Medical Officer and Personnel Health Officer, are one and the same, notwithstanding the increase in salary from P100.00 to P200.00 a month which is inconsequential if not minimal. Since the fixing of the term of office which was up to 31 October 1975 only is clearly oppressive and arbitrary, the same being in clear circumvention of the right of the respondent to be secure in his employment, We hold and rule that respondent's tacit or implied acceptance of the same is ineffective. Respondent's employment remains and is deemed to be without a definite period.

And considering that from year to year, for 25 years, respondent continued to render the same kind of service without renewal or re-appointment when all of a sudden, petitioners came up with the reorganization of the hospital and converted respondent's employment to one with a definite period, it becomes very obvious and apparent that the intention of the petitioners in providing for a fixed period is to "ease him out of the service" because of the denunciation made by respondent against the management. The injustice done to respondent is not difficult to see. After serving the hospital for 25 years, he was unceremoniously replaced without any valid reason. Nothing in the records discloses that respondent was found wanting in the manner he exercised his duties or that his service was unsatisfactory.

In fine, We find no abuse of discretion committed by respondent NLRC.

WHEREFORE, IN VIEW OF ALL THE FOREGOING, the petition is hereby DISMISSED.

No costs.

SO ORDERED.

Makasiar, (Chairman), Aquino, Concepcion, Jr., and Escolin, JJ., concur.

Abad Santos, J., concur with the observation that he would have dismissed the petition in a dissents absolution.

De Castro, J., on leave.

[1] pp. 73-90, Rollo.

[2] pp. 233-234, Rollo.

[3] Comment, pp. 142-144, Rollo.

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